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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,994	08/09/2000	Howard Dernehl	DERN-00101	5407
28960	7590	08/11/2009	EXAMINER	
HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE, CA 94086				ALVAREZ, RAQUEL
ART UNIT		PAPER NUMBER		
		3688		
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		08/11/2009		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/635,994	DERNEHL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Raquel Alvarez	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 May 2009.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,6-10,12,13,15-21,23,27-30,34-36,40,41 and 43-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,6-10,12,13,15-21,23,27-30,34-36,40,41 and 43-51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. This office action is in response to communication filed on 5/13/2009.
2. Claims 1-4, 6-10, 12-13, 15-21, 23, 27-30, 34-36, 40-41 and 43-51 are presented for examination.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 1-4, 6-10, 12-13, 15-21, 23, 27-30, 34-36, 40-41 and 43-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over article titled "Argos Business Solutions: Customer Referral Scheme Encourages Sales of Mobile Phones" Argos Business Solutions over article titled, "recommend-it.com"

With respect to claims 1-4, 7-10, 12-13, 15-16, 19, 27, 40-41, 46-51 Argos Business Solutions teaches a method of marketing (entire document). providing a referral-based service and one or more marketable entities to be purchased, wherein the referral-based service and the one or more marketable services are provided by a Service Provider and any purchase transaction of one of the one or more marketable entities is performed by the Service Provider (i.e. existing customers refer colleagues, friends or family to purchase a new mobile phone and the existing customers receive points)(page 1, paragraph 3); offering a reward to the first party by the Service Provider in response to the first

party purchasing the marketable entity, the reward is in exchange for a recommendation that results in a purchase of the marketable entity by a second party (i.e. existing customers collect points for purchases made by the referee (page 1, paragraph 3);

correlating data within a database, the data within the database comprising data relating to the reward offered to the first party and providing the reward to the first party if the second party purchases the marketable entity (i.e. database of quality branded items such as sports goods, children's toys and garden equipment are provided to the existing customers for purchases made by the referee)(page 2, paragraph 1); the recommendation being selected from a group consisting of goods and services (i.e. various purchases by the referee qualifies the existing customer to receive points)(page 1, paragraph 3).

Argos Business Solutions doesn't specifically teach sending the recommendation via an e-mail message to the second party comprising a personalized referral for the marketable entity including a serial number and a URL link to the web site of the service provider and updating the database with the e-mail address of the second party. Recommend-it.com teaches the first user will send an e-mail to a friend or colleague detailing the site and would include a short description identifying advertisements)(page 2); correlating the first set of data in the first e-mail message to data within a database (page 2); updating the database with an e-mail address of a second party provided by the first party (pages 1-4); forwarding the first e-mail message to the e-mail address of the second party (see page 4). It would have been obvious to a person of ordinary skill

in the art at the time of Applicant's invention to have included in the invention of Argos Business Solutions the teachings of recommend-it.com of sending the recommendation via an e-mail message to the second party comprising a personalized referral for the marketable entity including a serial number and a URL link to the web site of the service provider and updating the database with the e-mail address of the second party because such a modification would allow the second party the convenience of using his or her computer to viewed all the details of the items recommended.

With respect to the newly amended feature of the referral based service, the purchase transaction and the offering a reward being performed via an electronic communications network. Argos is silent as the implementation being performed via an electronic network. Recommend-it.com teaches using the Internet for referring, rewarding and performing transactions in general. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the invention of Argos using the electronic communications network (Internet) of Recommend-it.com in order to make the process of referring, purchasing and rewarding faster.

Claims 6, 17-18, 20, further recite that the link is accessible through a token in the form of a first icon visible in the message. Official notice is taken that it is old and well known in the computer related field to have a token in the form of an icon that is visible in the message in order to represent a function, object or program. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to

have included a token in the form of a first icon visible in the message in order to make file navigations and manipulation easier.

Claims 23, 28-30, 34-36, 43-45 further recite crediting an account within a database and recording the reward credited. Official notice is taken that it is old and well known in the business related arts to credit an account because such a modification would provide an easy and efficient way to reward a customer. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included crediting an account within a database and recording the reward credited in order to obtain the above mentioned advantage.

**Response to Arguments**

5. Applicant's arguments filed 5/13/2009 have been fully considered but they are not persuasive.
6. Applicant argues that neither Argos, recommend-it.com, nor their combination teach a service provider that implements the referral-based service and performs any purchase transaction of the marketable entity via the communications network and infrastructure. The Examiner disagrees with Applicant because Argos teaches a referral based program that rewards existing customers for recommending friends/family to become DX customers, becoming customers of DX is in essence equivalent to the purchase transaction of the claims. The first user is a member (i.e. purchasing the marketable entity) and recommends a second user to purchase/use the marketable entity (i.e. recommends the second user to become a customer of DX communications

and purchase a new phone). Using a communication network to perform the functions is taught in recommend-it.com, which teaches using the Internet for referring, rewarding and performing transactions in general.

7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that recommend-it.com does not teach the network means for providing a recommendation that includes a URL link to a website of the service provider having an offer to transact an exchange of the marketable entity. The Examiner wants to point out that Argos was the reference cited to teach providing an offer (points) to the first user if a second user becomes a member of DX communications and purchase a telephone. Recommend-it.com was merely cited to teach the general concept of sending an e-mail containing a recommendation in the form of an URL. It is the combination of both Argos and Recommend-it.com that teaches the second user purchasing/becoming a member of DX communication and purchasing a telephone that triggers the reward event in Argos and Recommend-it.com provides the network to enable the process to be performed via electronic means.

8. Applicant argues that Recommend-it.com doesn't teach forwarding the first e-mail message from the first party to the second party. The claims do not exclude using a third party to send the message. In Recommend-it.com the first message is initiated

from the first user so therefore the message indirectly comes from the first user regardless if a third party(recommend-it.com website) is used or not.

9. Applicant argues that the Official Notice taken on claim 28 is unrelated to the limitations of claim 28 because according to Applicant claim 28 is directed to the offering of the reward and not the awarding of the reward. The Examiner wants to point out that there's different well known mechanism for offering rewards to customers and to credit the accounts accordingly in order to provide easy, customized and provide choices of implementing the details of reward/offers.

**Conclusion**

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Point of contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Weinhardt can be reached on (571)272-6633. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raquel Alvarez/  
Primary Examiner, Art Unit 3688

Raquel Alvarez  
Primary Examiner  
Art Unit 3688

R.A.  
8/7/2009